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BEFORE THE  
**Federal Communications Commission**  
WASHINGTON, D. C. 20554

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In re )  
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Amendment of Section 73.202(b), ) MM Docket No. 94-29  
Table of Allotments ) RM-8416  
FM Broadcast Stations )  
(Willows and Dunnigan, California) )  
  
TO: Chief, Policy and Rules Division  
Mass Media Bureau

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FEDERAL COMMUNICATIONS COMMISSION  
CHIEF OF SECRETARY

**COMMENTS ON**  
**"MOTION TO EXPEDITE"**

KZSA Broadcasting, Inc., licensee of FM Broadcast Station KZSA, Placerville, California (KZSA), by its attorney, hereby respectfully submits its Comments on the "Motion to Expedite" filed November 1, 1994 by Pacific Spanish Network, Inc. (PSN). In so doing, the following is shown:

1. For reasons stated below, KZSA is sympathetic to PSN's call for expedited resolution of the above-captioned rulemaking proceeding. However, the instant docket (Docket 94-29) is by no means the most senior contested FM reallocation proceeding pending before the Mass Media Bureau. There is nothing special about Docket 94-29 when compared to other cases that have been pending before the Mass Media Bureau for almost half a decade.

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2. PSN calls for "expedited action" because it is a "minority owned" company. KZSA, which has strenuously opposed PSN's proposal in Docket 94-29, is also a minority-controlled company.<sup>1</sup> If as PSN seems to suggest minority status is a factor under the case law of Section 307(b) of the Communications Act of 1934, as amended, 47 U.S.C. §307(b) (which is a dubious concept at best), then KZSA's Opposition is entitled to at least equal weight as PSN's petition and comments in support thereof.

3. PSN also calls for "expedited action" because, according to it, it is having problems with its studio and transmitter locations at Willows; PSN in effect threatens to take station KQSC(FM) (formerly KIQS-FM), Willows, California, off the air in the event that Commission action on Docket 94-29 is not forthcoming.

4. Minority applicants who are not financially qualified are not entitled to special treatment under the FCC's rules, case law and policy. Indeed, "minority licensees must satisfy otherwise applicable FCC qualifications requirements." **Metro Broadcasting, Inc. v. FCC**, 497 U.S. 547, 110 S. Ct. 2997, 111 L. Ed. 2d 445, 483, n. 49 (1990). PSN's license requires it to operate KQSC to

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<sup>1</sup>KZSA is a wholly-owned subsidiary of Z Spanish Radio Network, Inc. (Z Network), 84.33% of whose issued and outstanding common stock is owned by Hispanic Americans and 15% of whose stock is owned by a corporation 100% owned by an African American. Thus, 99.33% of Z Network's stock is owned by members of minority groups.

serve Willows, California. PSN is not entitled under any law or policy to believe that it will be allowed to relocate its entire station almost 50 miles south into the Sacramento MSA. Indeed, should KQSC(FM) go off the air, the Commission should dismiss Docket 94-29.<sup>2</sup>

5. Furthermore, PSN is not entitled to special treatment because other proceedings before the Mass Media Bureau, also affecting minority parties, have been pending for a much greater period of time. Z Network, the parent of KZSA, is affected by two pending rulemaking proceedings which were docketed in early 1990, almost five years ago.

6. A subsidiary of Z Network is the proposed assignee of FM Broadcast Station KZFO (formerly KXXM), Madera, California; for no fault of Z Network's, the Mass Media Bureau has failed to resolve a petition against the seller

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<sup>2</sup>It is unseemly for a party such as KQSC to put pressure on the Commission to act, particularly in the face of a number of cogent opposition pleadings as in this case, by holding continued service to the public hostage. Cf. **WJIV-TV, Inc. v. FCC**, 231 F.2d 725, 731 (D. C. Cir. 1956) where, in the area of premature construction of a broadcast station, the Court indicated that premature construction "so commenced with the intention of the petitioner's gaining a possible advantage over a competitor" or used "to influence the Commission's decision with reference to an application filed, or to be filed, for a construction permit" was unseemly and illegal. Here, PSN is threatening "premature relocation" of KQSC by taking it off the air if favorable action is not taken. This is the worst kind of pressure; in light of the principles in **WJIV**, the Commission should reject PSN's request.

of KZFO and a companion AM station (KHOT)<sup>3</sup>. Furthermore, the current licensee of KZFO filed a "Petition for Rulemaking" seeking to relocate KZFO from Madera to Clovis, California (RM-7721). A **Notice of Proposed Rulemaking** was released February 23, 1990. **FM Table of Allotments, Clovis and Madera, California**, MM Docket No. 90-45, 5 FCC Rcd 1027 (1990). Comments were due on April 16, 1990 (replies on May 1, 1990). This proposal received objections from several Fresno-area broadcasters. Some four-and-one-half years later, it still remains pending. It remains unclear if and when the Mass Media Bureau will ever rule on either of these cases.

7. Second, another subsidiary of Z Network has signed a contract to purchase KKBB(FM), Channel 249A, Shafter, California. Station KKBB(FM) has had pending since April 9, 1991 an application to increase its power from 3.0 kilowatts to 6.0 kilowatts (maximum Class A facilities) (File No. BPH-910409IC). Station KKBB(FM) has an agreement with a short-spaced co-channel station, KAVS(FM), Mojave, California, under the terms of which both stations can increase their power simultaneously. However, these ostensibly meritorious modifications have been held hostage by Commission inaction on MM Docket No. 90-44, **FM Table of Allotments, East Los**

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<sup>3</sup>In **re Madera Broadcasters, Inc. and KZFO Broadcasting, Inc.**, File Nos. BAL-930514KE and BALH-930514KF, filed May 14, 1993, and which have been pending for eighteen months to the day.

**Angeles and Long Beach, California**, 5 FCC Rcd 956 (1990), in which Comments were due on April 16, 1990 and replies were due on May 5, 1990. Opposing comments were filed in this docket, and it remains pending; it is unclear whether the Mass Media Bureau intends to rule on this case.

**Conclusion**

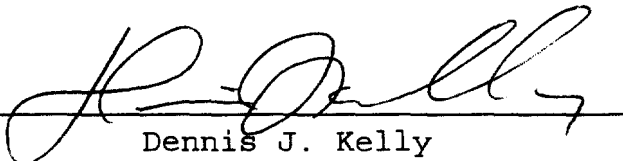
8. KZSA believes that the Commission should live up to the procedural timetable mandated by Congress in Section 5(d) of the Communications Act, 47 U.S.C. §155(d); three months for all non-hearing "original application, renewal and transfer" matters. The Mass Media Bureau has got to find a way to clean house and rule, one way or the other, up or down, on all pending rulemaking matters related to the FM Table of Assignments. Mass Media Bureau management must make this a priority for 1995. However, pending such a house cleaning, PSN makes no good case for "expedited action" when there are other matters affecting other minority broadcasters of at least equal importance which have been pending for a much greater length of time.

Respectfully submitted,

**KZSA BROADCASTING, INC.**

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By

A handwritten signature in dark ink, appearing to read "D. Kelly", written over a horizontal line.

Dennis J. Kelly  
Its Attorney


November 14, 1994

**CERTIFICATE OF SERVICE**

It is hereby certified that true copies of the foregoing ***Comments on Motion to Expedite*** were served by first-class United States mail, postage prepaid, on this 14th day of November, 1994, upon the following:

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